IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 9215 of 2004

Between:

1 Masarapu Devudu @ Sanyasi S/o Krishnama,
Kindra (V) , Rajavammangi (M), East Godavari Dist.
2 Masarapu Lakshmi, W/o Devudu,
Kindra (V), Rajavanmanagi (M), East Godavari Dist .

..... PETITIONERS

AND

1 The Addl. Agent to the Govt., Rampachodavaram
East Godavari Dist
2 The Special Deputy Collector, Tribunal Welfare, Rampachodavaram,
East Godavari District
3 The Mandal Revenue Officer, Rajavommangi (M),
East Godavari Dist
4 Gampa Nagaraju, S/o Narasiahulu
Kindra (V), Rajavomangi (M), East Godavari Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a appropriate writ or order or direction more particularly one in the nature of writ of Mandamus declaring the order passed by the 1st respondent in C.MA.No.21/2003, dt. 13/04/2004 which was served on the petitioner on 21/05/2004 filed against the order in L.T.R.P.No.29/2003 dt. 2/05/2003 on the file of the 2nd respondent as illegal, arbitrary, and contrary to law and consequently set aside the order passed by the 1st respondent in C.M.A.No.21/2003.

Counsel for the Petitioner: MR.K.VENKATESH

Counsel for the Respondents 1 to 3 : GP FOR SOCIAL WELFARE

Counsel for the Respondent No.4: Sri K.Bala Gopal

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.9215 of 2004

O R D E R :

The petitioners herein, who are husband and wife and non-tribals, filed this Writ Petition seeking writ of Mandamus challenging correctness of the proceedings ordering their eviction on the ground of violation of the provisions of the A.P. (Scheduled Areas) Land Transfer Regulation (Regulation 1 of 1959) as amended by Regulation 1 of 1970, (hereinafter referred to as 'the Regulation') as per the orders of the second respondent in L.T.R.P.No.29 of 2003, dated 02.05.2003 as confirmed in appeal by the first respondent in C.M.A.No.21 of 2003 on 13.04.2004.

The brief facts which are necessary for disposal of this Writ petition are that the first petitioner is an Ex-service man having worked in the Indian Army and the second petitioner is his wife. Both the petitioners claim that the then Tahsildar of Yellavaram mandal granted 'D' form patta in the year 1984 to an extent of Ac.5.14 cents in survey no.23/2C of Kindra village, Rajavommangi mandal, in favour of the first petitioner, and similarly another extent of Ac.3.99 cents in survey no.23/2A and Ac.1.03 cents in survey no.23/2B of the same village, in favour of the second petitioner. It is claimed that since then they have been in possession and enjoyment of their respective lands apart from having constructed a tiled house thereon and living

therein. These lands are situated in scheduled area. It is the case of the petitioners that on the earlier occasion, proceedings have been initiated under the provisions of the Regulation 1 of 1959 in L.R.T.P.No.29 of 2003 by the second respondent. The second petitioner was not a party thereto. On contest, the said proceedings were dropped. Even prior thereto, similar such proceedings in L.R.T.P.No.226 of 2002 were also dropped. In spite of the plea taken by the first petitioner as to the bar under the principles of *Res judicata* and also maintainability of the proceedings in view of the patta granted in their favour, the second respondent passed the orders on 02.05.2003 ordering eviction in respect of the land in survey nos.23/2A and 23/2B to an extent of Ac.3.97 cents and Ac.1.03 cents respectively, and restoration thereof to the government. Whereas under the same Orders, the claim of the first petitioner was upheld in regard to the land in survey no.23/2C holding that the petitioner is entitled to retain the same. As against the said orders, the petitioners filed appeal and since no stay was granted therein, the petitioners filed W.P.No.13672 of 2003 before this Court, which was disposed of by this Court as per order dated 10.07.2003 granting suspension of the eviction orders pending disposal of the appeal and directed disposal of the said appeal. Ultimately, the said appeal was taken up and dismissed as per order in C.M.A.No.21 of 2003 dated 13.04.2004 rejecting the petitioners' claim, but however, ordering the eviction even in regard to the land in survey no.23/2C though there is no appeal by the government. In view of the same, the petitioners contend that the very proceedings are liable to be set aside since the petitioners hold patta and further the same are also barred by principles of *Res judicata* apart from the fact that in regard to the land in survey no.23/2C, the appellate authority ought not to have interfered with the findings of second respondent in the absence of any appeal. Hence, the Writ Petition.

Contesting the claim, the first respondent filed detailed counter affidavit denying the allegations as made in the petition affidavit and

submitting that the provisions of the Regulation are squarely applicable in view of the fact that being non-tribal for the purpose of the land regulation as held by the Supreme Court, the petitioners are not entitled to any such land in scheduled area. It is submitted that the alleged patta, assignment and entire records are totally not correct and further the petitioners have never produced those pattas in the proceedings. The fact remains that the second petitioner, who claims the land, is no other than wife of the first petitioner and so the appellate authority has rightly taken into consideration the case from proper perspective and ordered eviction in respect of the land in survey no.23/2C. In regard to the earlier proceedings in L.T.R.P. No.226 of 2002, it is submitted that the said proceedings were only based on the concession made by the counsel, who was not authorised and therefore, it would not bar the present proceedings. Having regard to the findings as arrived at by the appellate authority, the petitioners can not make any claim, which is in the teeth of the Regulation. Hence, the Writ Petition is not maintainable and is liable to be dismissed.

The learned counsel appearing for the petitioners by taking through the orders of the both the authorities, submitted that in the absence of any appeal by the government, the finding of the second respondent in respect of land in survey no.23/2C,could not have been varied and set aside. He further submits that in view of the earlier proceedings in favour of the petitioners, the present proceedings have been barred under the principles of *Res judicata*.

Sri K.Bala Gopal, learned counsel appearing for the respondents strenuously sought to repel the aforesaid contentions on the ground that the niceties as sought to be raised in regard to the legal procedures as applicable to normal courts are not applicable to the agency courts or authorities in scheduled areas, and further admittedly the land is existing in the scheduled area and the

petitioners being non-tribals, can not avail any benefit of such land to the detriment of the persons who are entitled to and whose rights are sought to be protected under the Regulation.

Considering the submissions made and also on perusal of the material, it is seen that there is no dispute to the fact that the land in question is situated in scheduled area and the petitioners are non-tribals. Further, the petitioners 1 and 2 are husband and wife. Both of them claimed land by way of assignment, in different survey numbers in respect of which the proceedings have been initiated as having violated the provisions of the aforesaid Regulation. The second respondent, though ordered eviction in respect of other lands, found favour, in favour of the petitioners in respect of the land in survey no.23/2C. On appeal, the first respondent-appellate authority has rejected the entire claim of the petitioners even in regard to the land in survey no.23/2C and ultimately ordered eviction of the same. Second petitioner was also impleaded in the appeal proceedings.

It is now well settled that the Regulation has been specifically brought out with a view to regulate transfer of the land in scheduled areas. The whole object being to see that the right and enjoyment of the tribals be sufficiently protected without any interference or occupation by the non-tribals. It is with this view all such transfers are being held to be wide and the Regulation contemplates the procedure for restoration of the lands to the tribals. As pointed out by the learned counsel appearing on behalf of the respondents, the petitioners claimed the said lands in pursuance of patta made by the government, but however, the same has not seen the light of the day. Even otherwise, it is not shown as to how the petitioners were conferred any such patta or assignment in respect of the land which is situated in the scheduled area. In fact, there could not have been any such assignment or patta in favour of non-tribals. Even such assignment or patta by the government would amount to a transfer,

which is mischief as contemplated under the Regulation. Therefore, the claim of the petitioners merely based upon the patta, can not have any legal basis nor would afford any protection or invocation of provisions of the Regulation.

In regard to the earlier proceedings as referred to by the petitioners, admittedly, the proceedings were disposed of on merits. Further, having regard to the clear conclusions as arrived at by both the authorities in this case from a proper perspective, question of applying the principles of *Res judicata* does not arise as held by this Court in *Gaddam Raghavulu V. Agent to Government (Dist. Collector), E.G.Dist., Kakinada & Others,* where the learned Single Judge of this Court Justice P.Venkatarama Reddi (as he then was), held that the principles of *Res judicata* shall be applied with caution and circumspection in dealing with a case arising under the Regulation meant for the protection of the tribes. If the proceedings were dropped earlier for the reason that the tribal could not produce sufficient evidence, it does not preclude a subsequent enquiry.

Coming to other plea raised by the petitioners in regard to the competency of the appellate authority to vary with any finding of the primary authority in the absence of any appeal, it is seen that in respect of scheduled areas governed by the provisions of the Regulation, the provisions of the normal procedure under the Code of Civil Procedure have no application. Therefore the procedure as contemplated in regard to appeal under common law before a Court, can not straight away be applied to the provisions of the Regulation. However, in the facts and circumstances of the present case, where two different lands are sought to be claimed by none other than husband and wife who are petitioners herein and also who are also parties before the authorities, the approach has to be made by proper perspective for assessing the situation on a just ground, and it can

not be said that the appellate authority could not have gone into the same, more so when the subject matter before the primary authority namely the second respondent, consists all the lands including land in survey no.23/2C. Having appraised the same, the lower appellate authority has come to right conclusion that the petitioners have no right, and that any claim by them under patta, assignment or otherwise is in violation of the aforesaid Regulation and therefore, they are not entitled to remain in possession and it is to be restored to the government. In the circumstances, I do not find any merits in the contentions raised on behalf of the Petitioners.

Accordingly, the Writ Petition is dismissed. No costs.

26.10.2004

DRK

Copy to:

1. The Addl. Agent to the Govt., Rampachodavaram, East Godavari Dist
2. The Special Deputy Collector, Tribunal Welfare, Rampachodavaram, East Godavari District

3 The Mandal Revenue Officer, Rajavommangi (M), East Godavari Dist
4 Two CCs to the G.P. for Social Welfare, High Court buildings, High Court of A.P., Hyderabad (o.u.t.).

5. Two CD copies.